



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Rulemaking for Adoption of a General Order and
Procedures to Implement the Digital Infrastructure
and Video Competition Act of 2006.

Rulemaking 06-10-005

**REPLY COMMENTS OF THE COUNTY OF LOS ANGELES, CALIFORNIA, THE
CITY OF LOS ANGELES, CALIFORNIA, AND THE CITY OF CARLSBAD,
CALIFORNIA ON THE PROPOSED DECISION ADOPTING A GENERAL ORDER
AND PROCEDURES TO IMPLEMENT THE DIGITAL INFRASTRUCTURE AND
VIDEO COMPETITION ACT OF 2006**

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The County of Los Angeles, California, the City of Los Angeles, California, and the City of Carlsbad, California (sometimes collectively referred to herein as the “Joint Responders”) respectfully submit the following reply comments regarding the Proposed Decision Adopting a General Order and Procedures to Implement the Digital Infrastructure and Video Competition Act of 2006 (“DIVCA”).

**I. LOCAL GOVERNMENT AUTHORITY TO MANAGE RIGHTS-OF-WAY
INCLUDES THE AUTHORITY TO REQUIRE SECURITY INSTRUMENTS**

Section VII of the Proposed Decision correctly confirms that “local entities may require further security instruments as part of their oversight of local rights-of-way.” (Proposed Decision, p. 71). AT&T, however, asserts that this statement should be modified or removed from the decision, because it is contrary to the “clear intent” of the Legislature. (AT&T Opening Comments, p.3). The crux of AT&T’s argument is that because some local entities have, in the past, chosen not to require AT&T to post bonds for its “ILEC” construction activities, the Commission should refrain from making any statements which may “embolden” such local

entities to reconsider whether bonding may be necessary with respect to the construction of AT&T's video facilities. (AT&T Opening Comments, p.3).

In fact, the clear intent of the Legislature with respect to the permitting process is apparent from the applicable provisions of DIVCA. As the Proposed Order (at p. 71-72, fn.251) points out, DIVCA requires an applicant for a state franchise to affirm, under penalty of perjury, that it will "comply with all lawful city, county, or city and county regulations regarding the time, place, and manner of using the public rights-of-way, including but not limited to, payment of applicable encroachment, permit, and inspection fees." Public Util. Code § 840(e)(1)(C). In addition, Public Utilities Code Section 5585(b) provides that "[n]othing in this division shall be construed to change existing law regarding the permitting process or compliance with the California Environmental Quality Act [citations] for projects by a holder of a state franchise." Thus, the statements that AT&T complains of are in fact accurate statements of the Legislature's intent concerning the authority of a local entity to require security instruments as part of the permitting process.

AT&T further complains that the Proposed Decision does not reference Section 1468 of the Streets and Highway Code, as it relates to the authority of a County to require bonds from a "public utility." (AT&T Opening Comments, p. 2). However, the Proposed Decision need not reference Section 1468, because video service providers are not public utilities. Public Util. Code § 5820(c). Indeed, as the Proposed Decision points out, in comments on the issue of intervenor compensation, "AT&T took pains to make clear that '*video service providers are not*

public utilities” and thus, the applicable provisions of the Public Utilities Code do not apply. (Proposed Decision, p.194 (emphasis in original)). AT&T cannot have it both ways.¹

II. CONCLUSION

Joint Responders do not believe there is any danger that the language of the Proposed Order will “embolden” local entities who traditionally do not require bonding to change their approach. To the contrary, Joint Responders maintain that removal of the language – which is the basis for the Proposed Decision’s conclusion to cap Commission-imposed bonds at \$500,000 – may embolden AT&T to assert that it is not required to comply with the local right-of-way management regulations of those local entities that choose to exercise their authority to require security instruments, as part of their right-of-way management practices. Accordingly, Joint Responders urge the Commission to adopt the provisions of Section VII which affirm the authority of local entities to require bonds, as they are currently drafted.

Respectfully submitted,

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February 13, 2007

¹ The Legislature intended that DIVCA create a “fair and level playing field for all market competitors that does not disadvantage or advantage one service provider or technology over another.” Pub. Util. Code §5810(A). Thus, it is not at all clear that the Legislature intended that a telephone company seeking to become a state video franchise holder be afforded advantageous treatment *vis a vis* other state franchise holders in the local permitting process.

CERTIFICATE OF SERVICE

I certify that I have served a true copy of the original attached REPLY COMMENTS OF THE COUNTY OF LOS ANGELES, CALIFORNIA, THE CITY OF LOS ANGELES, CALIFORNIA, AND THE CITY OF CARLSBAD, CALIFORNIA ON THE PROPOSED DECISION ADOPTING A GENERAL ORDER AND PROCEDURES TO IMPLEMENT THE DIGITAL INFRASTRUCURE AND VIDEO COMPETITION ACT OF 2006 via e-mail on all parties on the attached service list.

Dated: February 13, 2007 at San Francisco, CA

William L. Lowery

**A. CALIFORNIA PUBLIC UTILITIES COMMISSION
Service Lists**

**i. Proceeding: R0610005 - CPUC - CABLE
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